APPENDIX

EXHIBIT 1

Judgment

COURT OF APPEALS OF NORTH CAROLINA

Spring Session, 1971

No. 7118C94 Camden County

STATE OF NORTH CAROLINA

v.

ROBERT MUSE

This cause came on to be argued upon the transcript of the record from the Camden County Superior Court. Upon consideration whereof, this Court is of opinion that there is error in the record and proceedings of said trial tribunal.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Earl W. Vaughn, Judge, be certified to the said trial tribunal to the intent that a new trial is awarded. And it is considered and adjudged further, that the said Camden County Board of Commissioners do pay the costs of the appeal in this Court incurred, to wit, the sum of Five and 50/100 dollars ($5.50), and execution issue therefor. Certified to Superior Court this 7th day of June 1971.

A true copy.

/s/ THEODORE C. BROWN, JR.
Clerk of the Court
of Appeals

[Filed May 26, 1971]

No. 711SC94 FIRST DISTRICT

NORTH CAROLINA COURT OF APPEALS

SPRING SESSION 1971

From Camden

STATE OF NORTH CAROLINA

v.

ROBERT MUSE

Appeal by defendant from Rouse, J., 22 September 1970 Session of Superior Court held in Camden County.

The defendant was charged in a bill of indictment with breaking and entering a building occupied by City Motor Parts, Inc. of Elizabeth City, with larceny of personal property located therein, and with receiving stolen goods, knowing them to be stolen. The bill of indictment was returned in Pasquotank County, on motion of the defendant for a change of venue, the case was transferred to the Superior Court of Camden County for trial. The defendant was tried only upon the charge of receiving stolen goods. He pleaded not guilty. From a verdict of guilty, defendant appeals.

Attorney General Robert Morgan by Assistant Attorney General William F. Briley for the State.

Worth and Beaman by Grafton G. Beaman for defendant appellant.

VAUGHN, Judge. Appellant contends that the court erred in its findings entered after *voir dire* as to whether his confession was voluntary, and in allowing into evidence incriminating statements amounting to a confession. The evidence shows that S.B.I. Officer O. L. Wise stated that he visited the defendant in his jail cell and had a conversation

with him. At that point, counsel for defendant entered an objection, and a *voir dire* was conducted. Officer Wise's testimony on *voir dire* is, in substance, as follows: Officer Wise made several visits to defendant's jail cell between 12 June 1969 and 15 July 1969. Each visit to the defendant's cell was a result of defendant's request to see him. The defendant stated on several of these visits that he did not understand why his bond was so high; that he had a family and could not support his family by being in jail, and he could not employ counsel unless he could get out of jail and go to work. He asked the officer to help him do something to get his bond lowered. The officer tried to contact a judge but was unable to do so and so advised the defendant. The defendant indicated he might have some information that would be of interest and value to the officer. The officer told the defendant that if he could help the officer in solving any crimes he would appreciate it. "He still wanted me to help assist in getting the bond lowered." The officer told the defendant that he was a police officer and could not make any promises. The officer did, however, tell the defendant that if he gave him any information in solving any case that "I would let it be known." Officer Wise said that he did not caution defendant of his constitutional rights because he did not go to the jail to interrogate defendant, but went there at defendant's request. Officer Wise said all of defendant's statements were voluntarily made, without any prompting from him. The defendant did not offer any evidence on *voir dire*. Judge Rouse found facts in substance as follows: At no time were the discussions with the defendant initiated by Officer Wise. Mr. Wise did not request the defendant to make a statement with respect to the alleged breaking and entering of City Motor Parts, Inc. and larceny of tools therefrom. The information and statements of the defendant were volunteered. This was not a custodial interrogation wherein the questioning was initiated by a law enforcement officer. There is nothing to indicate any lack

of intelligence of the defendant. Judge Rouse concluded that the statements were voluntarily and understandingly made, and admissible as evidence in this case. The jury returned and the officer related the statements made to him by defendant with reference to the tools.

This court must decide as a matter of law whether the circumstances of this case rendered the confession inadmissible. State v. Fuqua, 269 N.C. 223, 152 S.E. 2d 68. In doing so, we will again bring forward the following from State v. Roberts, 12 N.C. 259:

> "Confessions are either voluntary or involuntary. They are called voluntary when made neither under the influence of hope or fear, but are attributable to that love of truth which predominates in the breast of every man, not operated upon by other motives more powerful with him, and which, it is said, in the perfectly good man cannot be countervailed. These confessions are the highest evidences of truth, even in cases affecting life. But it is said, and said with truth, that confessions induced by hope or extorted by fear are, of all kinds of evidence, the least to be relied on, and are therefore entirely to be rejected."

The defendant was in custody and without counsel. He had reason to believe that the officer would act as an intercessor with the court in an effort to get his bond reduced. In fact the officer did attempt to contact a judge and the defendant was so advised. The defendant told the officer he had information that would be of value and was told that such information would be appreciated. Although the officer told the defendant that he knew he could not make any promise, he also told him, "If he gave me any information in solving any cases that I would *let it be known.*" "[A] confession obtained by the slightest emotions of hope or fear ought to be rejected." State v. Roberts, *supra*. The total circumstances surrounding the

defendant's statement to the officer compel us to hold as a matter of law that it was prompted by an "emotion of hope" and thus was involuntary. State v. Fuqua, *supra*, State v. Woodruff, 219 N.C. 333, 130 S.E. 2d 641; State v. Gibson, 2 N.C. App. 187, 162 S.E. 2d 627. Its admission in evidence was error. Since there must be a new trial, we do not discuss the other assignments of error brought forward by the defendant.

New Trial.

CHIEF JUDGE MALLARD and JUDGE PARKER concur.

A True Copy

THEODORE C. BROWN, JR.
Clerk of the Court of Appeals
of North Carolina

By: PATTIE P. BARBER
Deputy Clerk

June 7, 1971

EXHIBIT 2

Judgment

SUPREME COURT OF NORTH CAROLINA

Fall Term, 1971

No. 88 Camden County

(711SC94)

STATE OF NORTH CAROLINA

v.

ROBERT MUSE

This cause came on to be argued upon the transcript of the record from the North Carolina Court of Appeals: Upon consideration whereof, this Court is of opinion that

there is error in the record and proceedings of said Court of Appeals,

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Joseph Branch, Justice, be certified to the said North Carolina Court of Appeals, to the intent that the judgment is reversed. And it is considered and adjudged further that the defendant do pay the costs of the appeal in this Court incurred, to wit, the sum of ***Fifty-Seven and 00/100*** dollars ($57.00), and execution issue therefor. Certified to North Carolina Court of Appeals this 27th day of December 1971.

A True Copy.

ADRIAN J. NEWTON
Clerk of the Supreme Court
By: MRS. PEGGY N. BYRD,
Deputy Clerk

SUPREME COURT OF NORTH CAROLINA

FALL TERM 1971

No. 88—Camden

STATE OF NORTH CAROLINA

v.

ROBERT MUSE

On certiorari to review decision of the Court of Appeals reported in 11 NC App. 389, which ordered a new trial for error found in the trial before Rouse, J., at 22 September 1970 Session of Superior Court of Camden.

We allowed the State's petition for certiorari pursuant to G.S. 7A-31 on 30 July 1971.

Defendant was charged in a bill of indictment by the Grand Jury of Pasquotank County with breaking and entering and larceny, and with receiving stolen goods, knowing them to be stolen. On 25 February 1970 defendant appeared in the Superior Court of Pasquotank County with counsel J. Ball of the Virginia Bar, and Mr. J. W. Jennette of the Pasquotank Bar. His counsel tendered a plea of guilty to receiving stolen property; however, defendant stated that he would plead guilty to receiving stolen property, but not knowing that it was stolen. The court refused to accept this plea, and set the trial for the next day. Defendant failed to appear, and the trial judge set his appearance bond in the amount of $20,000. Defendant was later apprehended in Virginia and was returned to Pasquotank County jail. He escaped from that jail and was again apprehended, and upon return to North Carolina was sent to Central Prison in Raleigh to await his trial. Upon defendant's motion, Judge Walter Cohoon ordered a change of venue to Camden County, set defendant's appearance bond in the amount of $10,000, and set the date of trial for the 21 September 1970 Session of Camden. The case was called for trial on 22 September 1970, and the solicitor announced that he elected to try defendant on the charge of receiving stolen property. Defendant, through his counsel, Messrs. J. M. Ball and Herbert Mullen, entered a plea of not guilty.

The State's evidence may be summarized as follows:

Thomas L. McDaniels, part-owner of City Motor Parts, Inc., testified that on the morning of 3 May 1969 he discovered that his building had been forcibly entered during the previous night and that a number of tools and automobile parts had been removed. At the request of the police he had hastily prepared a list of missing tools which he valued at approximately $1,000 to $1,200. He later identified a number of missing tool sets by descriptions and stock number. These tool sets had not appeared on the

original list. He stated, over objection, that in his opinion these tool sets had a fair market value of $200 to $250.

Calvin Hudson, who operated an automobile repair garage in Pasquotank County, testified that sometime after 3 May 1969 defendant offered to sell him a box of tools for $130. Defendant stated that the tools were not stolen. Hudson told defendant that he did not have that kind of money and would need two or three days to get the money. On the next day he contacted Thomas McDaniels, who told him to go ahead and buy the tools. He bought the tools. He bought the tools two or three days later for the agreed price of $130, notified McDaniels, and later delivered the tools to McDaniels and the local police officers. He did not get any serial numbers from the tools, but he stated that a number of the tools exhibited to him in court were similar to those which he had delivered to McDaniels and the police officers.

W. C. Owens, Chief of Police of Elizabeth City, stated that he accompanied McDaniels and SBI Agent O. L. Wise to Hudson's garage where Hudson exhibited and delivered a number of tools to them. Owen identified a number of the tools as being a portion of the tools seen at the garage. He identified a paperwriting made by him on 22 May 1969 which purported to be a list of items recovered from Hudson's gagage which Hudson had purchased from Robert Muse on Wednesday, 21 May 1969. The first item on this list was an "Ingersol Rand Impactool, size 405, Serial No. 128125, Model A." The list which he identified was marked State's Exhibit 15, and was introduced into evidence over defendant's objections.

T. L. McDaniels was recalled and identified and placed values totalling $685 on tools which he said were the same as described on the itemized lists. He could identify only the air wrench by serial number. Other items were identified by inventory and stock number. He stated his business

was the only one in the Elizabeth City area which sold some of the items recovered from Hudson.

SBI Agent O. L. Wise, *inter alia*, testified as to conversations he had with defendant while defendant was confined in jail. This witness' testimony will be considered in the opinion.

The State's other evidence was cumulative and need not be recounted.

The defendant offered no evidence.

The jury returned a verdict of guilty of receiving stolen goods, knowing them to be stolen, as charged in the bill of indictment. Defendant appealed from judgment imposing a prison sentence for a term of not less than five nor more than seven years.

ATTORNEY GENERAL MORGAN, ASSISTANT ATTORNEY GENERAL BRILEY for the State.

GRAFTON G. BEAMAN, WORTH & BEAMAN, for Defendant.

BRANCH, Justice. Defendant's principal assignment of error is that the trial court erred in its *voir dire* findings and in allowing into evidence incriminating statements made by defendant.

When the State called SBI Agent O. L. Wise as a witness, he testified that he had had a conversation with defendant. Upon objection, the trial judge excused the jury and held a *voir dire* hearing.

Agent Wise testified on *voir dire* that he made several visits to defendant's jail cell during the period from 12 june 1969 to 15 July 1969. Each visit was made pursuant to a request by defendant. Defendant asked his help towards getting a smaller apeparance bond. Defendant told him that he had information that would be helpful in solving other crimes. Wise told defendant that if he gave him any information he would appreciate it and that he "would

let it be known." He told defendant that he could make no promises. He never cautioned defendant as to his constitutional rights since he did not go to the jail for the purpose of questioning defendant. Wise stated that all statements made by defendant were made without prompting from him and that he did not initiate any of the questions or at any time interrogate defendant. Defendant gave his information concerning other crimes and also told him that he (defendant) had bought certain tools for $90 which he later sold to Mr. Hudson. Defendant further stated that he did not break into the City Motor Parts building. Wise was the only witness to testify on *voir dire* and he was not cross-examined by defendant's attorney.

At the close of the *voir dire* hearing, the trial judge, *inter alia*, found:

> (7) No "Miranda warning" was given to the defendant by Mr. Wise. At the time of the alleged conversation the defendant was under arrest and was in custody. *C* Mr. Wise did not request the defendant to make a statement concerning the alleged breaking and entering of City Motor Parts, Inc., and larceny of tools therefrom. The information and above statements of the defendant were volunteered on the occasions when he called for Mr. Wise and when Mr. Wise talked to him at his request in the Pasquotank County Jail. *D*
>
> *E* (8) Mr. Wise did not solicit information from the defendant concerning the City Motor Parts, Inc. case. *F*
>
> *G* (9) This was not a custodial interrogation, wherein the questioning was initiated by a law enforcement officer after the person had been taken into custody, or otherwise deprived of his freedom of action. *H*

The Court then concluded:

> *M* (a) The statements made by the defendant on the occasions in question concerning the tools taken from

City Motor Parts, Inc., were voluntarily and understandingly made and are admissible as evidence in this case. *N*

O (b) The statements made by the defendant on the occasion in question do not fall within the prohibition of Miranda v. Arizona. *P*

Defendant's objections was overruled and Agent Wise then testified before the jury to substantially the same facts which he related on *voir dire*.

There was plenary evidence to support the findings of fact made by the trial judge, and such findings will not be disturbed on appeal. State v. Childs, 269 NC 307, 152 SE 2d 453; State v. Bruce, 268 NC 174, NC 150 SE 2d 216.

We therefore need only decide whether the circumstances of this case, as a matter of law, rendered the statements inadmissible.

The statements made by defendant to SBI Agent Wise were inculpatory since they admitted an essential part of the offense charged. State v. Hamer, 240 NC 85, 81 SE 2d 193. However, the fact that defendant was in custody when he made the statements does not of itself render the confession inadmissible. State v. Hines, 266 NC 1, 145 SE 2d 363.

In Miranda v. Arizona, 384 US 436, 16 L. ed. 2d 694, 86 S. Ct. 1602, we find the following:

> "(T)he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into

custody or otherwise deprived of his freedom of action in any significant way.

. . . .

"The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but *whether he can be interrogated*. There is no requirement that police stop a person who enters a police station and states that the wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding to-day." Id. at 478, 16 L. ed. 2d at 726, 86 S. Ct. at 1630. (Emphasis added)

Accord: State v. Chance, filed this day; State v. Fletcher and St. Arnold, 279 NC 85, 181 SE 2d 405; State v. Morris, 275 NC 50, 165 SE 2d 245; State v. Perry, 276 NC 339, 172 SE 2d 541; State v. Meadows, 272 NC 327, 158 SE 2d 638; State v. Spence, 271 NC 23, 155 SE 2d 802.

It should be noted that the statement made by the SBI Agent that he would "let it be known" was made in conversation concerning other crimes and was accompanied by a statement from the officer that he could make no promises.

The circumstances of this case do not show that defendant's statements were "obtained by hope or fear," State v. Roberts, 42 NC 259, or that they resulted from any sort of pressure, State v. Perry, supra. This record clearly shows that there was no custodial interrogation. Thus, it was not necessary for Agent Wise to warn defendant of his rights as required by Miranda v. Arizona, supra.

There was no error in the *voir dire* proceedings, and the trial judge properly admitted defendant's statements into evidence.

When this Court grants certiorari pursuant to 7A-31, our review is ordinafily restricted to the rulings of the Court of Appeals which are assigned as error in the petition for certiorari and brought forward in petitioner's brief. State v. Williams, 274 NC 328, 163 SE 2d 353. However, this case is unusual in that it is a criminal case in which the State petitioned for certiorari. The Court of Appeals ruled on only one of defendant's assignments of error in granting a new trial. We therefore elect to depart from the general rule and consider the remaining assignments of error.

Defendant contends that the trial judge committed prejudicial error by allowing certain opinion evidence as to value. During the solicitor's direct examination of State's witness Thomas L. McDaniels, the part-owner and operator of City Motor Parts, Inc., the following occurred:

> Q. Did you place a value on these items that were missing? A. No, sir.
>
> Q. Do you have an opinion now satisfactory to yourself as to the reasonable market value of them? A. Well—
>
> OBJECTION by defendant OVERRULED. EXCEPTION No. 1.
>
> A. Well I would estimate between Two and Two Fifty.
>
> Q. $200 and $250? A. Yes, sir.

A witness who has knowledge of value gained from experience, information and observation, may give his opinion of the value of personal property. Stansbury, N. C. Evidence 2d, § 128, p. 300.

In this jurisdiction when a witness is offered for the purpose of giving opinion evidence, the approved procedure requires that he first be qualified to give the evidence. After qualification, he is asked if he has an opinion and, upon giving an affirmative answer, is then asked to state his opinion.

The witness McDaniels obviously had such experience and knowledge as would qualify him to give opinion evidence concerning the value of this property. Since his answer clearly indicated that he had an opinion, his failure to first state that he had such opinion does not constitute prejudicial error.

Even had the admission of this evidence been prejudicial error, it was later rendered harmless by the admission, without objection, of similar evidence from the same witness. Carver v. Lykes, 262 NC 345, 137 SE 2d 139. This assignment of error is overruled.

Defendant contends that the trial judge's failure to instruct the jury that they must find from the evidence and beyond a reasonable doubt that the tools allegedly received by defendant were the same tools stolen from City Motor Parts, Inc., resulted in prejudicial error.

In support of this contention he cites and relies on State v. Frazier, 9 NC App. 44, 175 SE 2d 377, and State v. Jackson, 4 NC App. 459, 167 SE 2d 20, which require such a charge. In these cases the defendants were charged with breaking and entering and larceny, and the State relied on the doctrine of recent possession of stolen goods.

The doctrine of recent possession of stolen goods as recognized by this Court allows the raising of an inference that the possessor is guilty of breaking and entering and larceny. It is an evidentiary circumstance to be considered by the jury along with all other circumstances. State v. Allison, 265 NC 512, 144 SE 2d 578; State v. Foster, 268 NC 480, 151 SE 2d 62. The trial judge in such cases must require the jury to find from the evidence and beyond a reasonable doubt that the goods found in possession of the accused are the same goods that were lost as the result of the breaking and entering or the larceny with which he stands charged. State v. Jackson, 274 N.C. 594, 164 SE 2d 369. This requirement is understandable since the allowed inference would lose all its probative value if the goods

possessed by the defendant were not the same goods lost as a result of the larceny or the breaking and entering with which he stood charged.

The essential elements of the crime of receiving stolen goods are: "(a) The stealing of the goods by some other than the accused; (b) that the accused, knowing them to be stolen, received or aided in concealing the goods; and (c) continued such possession or concealment with a dishonest purpose." State v. Neill, 244 NC 252, 93 SE 2d 155. Wharton's Criminal Evidence, 10th Edition, Volume 1, § 325b, p. 643.

The crime of receiving stolen goods is a "sort of secondary crime based upon a prior commission of the primary crime of larceny" and "(t)he inference or presumption arising from the recent possession of stolen property, without more, does not extend to the statutory charge (G.S. 14-71) of receiving stolen property knowing it to have been stolen or taken." State v. Neill, supra.

In his final mandate to the jury, the trial judge charged.

> So I charge you, Ladies and Gentlemen, that if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you, that the defendant, Robert Muse, at the time and place in question, that is, subsequent to May 3, 1969 and before May 21, 1969, did receive certain goods, which had been stolen by some person other than the defendant, and that the goods so stolen and so received by the defendant, were of a value in excess of $200, and that at the time he received the goods the defendant knew that they had been theretofore feloniously stolen, and that the property was received by the defendant with a felonious intent, that is, the intent to deprive the owner of its property permanently and to convert it to the use of the person so receiving the same, that is, the defendant, it will be your duty to render a verdict against the defendant of guilty, as charged in the bill.

of indictment. If you fail to so find it will be your duty to give a verdict of not guilty, or if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it will be your duty to give him the benefit of such doubt and acquit him.

If under the circumstances of this case you find from the evidence and beyond a reasonable doubt that the defendant received stolen goods, knowing them to be stolen, as the court has explained these terms to you, and the goods in question were of a value of $200 or less, then it would be your duty to return a verdict of guilty of receiving stolen goods, knowing them to have been stolen, of a value of $200.00 or less, a misdemeanor. If you fail to so find it will be your duty to give a verdict of not guilty, or if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it will be your duty to give him the benefit of such doubt and acquit him.

In instant case the State does not rely on inferences or presumptions, and the charge placed upon the State the burden of proving beyond a reasonable doubt each individual element of the crime of receiving stolen property. This charge was adequate and this assignment of error is overruled.

Defendant contends that the trial judge committed prejudicial error by admitting into evidence State's Exhibits 8, 9, 10, 11 and 15 without sufficient identification by the State's witnesses.

State's Exhibit 15 was an inventory or list made by Chief of Police Owens of tools that he received from the witness Hudson. He testified that he made the inventory immediately after the tools were received from Hudson.

State's Exhibit 10, consisting of nineteen Husky socket wrenches; State's Exhibit 11, consisting of a ratchet wrench

and extension; and State's Exhibit 9, a box of tools, were all admitted into evidence after witness Hudson stated that they appeared to be the same items that he had purchased from defendant and after the Chief of Police had, without objection, identified State's Exhibits 8, 9, 10, and 11 as the items he had received from Hudson. State's Exhibit 8 was identified by Cliff Jones, a part-owner of City Motor Parts, Inc., by the number and his handwriting that appeared thereon.

Any object which has a relevant connection with the case is admissible into evidence. State v. Stroud, 254 NC 765, 119 SE 2d 907. Such object must be identified by the witness. State v. Burno, 158 NC 632, 74 SE 462.

In the case of State v. Macklin, 210 NC 496, 187 SE 785, the defendant was charged with murder. It was there stated:

> "The only other exception was to the admission of the shotgun as an exhibit in the case. It was competent to show the possession of a shotgun by defendant about the time of the homicide, and it was testified that the one found in his room was like the one with which he had been seen on the night the deceased was shot. This exception cannot be sustained. S. v. Burno, 158 N.C., 632; S. v. Vann, 162 N.C., 534. The charge of the court was free from error."

See also: State v. Fikes, 270 NC 780, 155 SE 2d 277; State v. Jarrett, 271 NC 576, 157 SE 2d 4; State v. Tilley, 272 NC 408, 158 SE 2d 573.

We hold that State's Exhibits 8, 9, 10, 11 and 15 were relevant and were sufficiently identified before their introduction. The trial judge properly admitted them into evidence.

A careful examination of the entire record fails to reveal prejudicial error. The decision of the Court of Appeals is

Reversed.

EXHIBIT 3

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NORTH CAROLINA
CAMDEN COUNTY

STATE OF NORTH CAROLINA

v.

ROBERT MUSE, *Defendant*

Order

This cause coming on for consideration as a result of a Petition filed in the Superior Court of Camden County on the 17th day of January, 1972, seeking the appointment of counsel to have reviewed in the Supreme Court of the United States the decision of the Supreme Court of North Carolina in the above-entitled matter, and to also have an appearance bond set pending said review, the undersigned finds that the defendant was convicted in Camden County of unlawfully receiving stolen property, knowing it to have been stolen, and was represented by court-appointed counsel, Mr. Herbert Mullen; that thereafter an appeal from the conviction of the defendant was taken and Mr. Grafton Beaman was appointed by the Court to perfect the appeal, which he did; that the Court of Appeals granted a new trial for errors assigned, and thereafter the State of North Carolina for review of said decision, which was granted, and subsequent review by the Supreme Court of North Carolina resulted in reversing the North Carolina Court of Appeals and affirming the Superior Court trial. Attorney Beaman represented the defendant before the Court of Appeals, and the Supreme Court of North Carolina. That upon the certification of the opinion of the Supreme Court of North Carolina commitment was issued, and the defendant taken into custody, and is now imprisoned, and being held under direction of the North Carolina Department of Correction.

The Court finds that the said defendant Petitioner is an indigent and is entitled to the appointment of counsel for the review petitioned for, pursuant to the provisions of G. S. 7A-451(b)(6), and that it is necessary to appoint an attorney to represent him with respect to said review. That Mr. Grafton Beaman, as a result of appointment to an official position in the Federal Courts of the United States, is not allowed to practice in the Federal Courts of the United States, and appointment of the Petitioner's previous appellate counsel would be inappropriate. The undersigned finds that Mr. Gerald F. White, of Elizabeth City, is an able and competent attorney, and has practiced before the Supreme Court of the United States;

IT IS THEREFORE ORDERED AND DIRECTED that Mr. Gerald F. White be, and he is hereby, appointed as counsel to represent the said defendant Petitioner, to affect a review of the decision of the Supreme Court of North Carolina by the Supreme Court of the United States.

That as to the portion of the Petition requesting that appearance bond be set pending said review, the undersigned is of the opinion that he has no authority to set such bond, and that as to any relief in this respect the Petitioner will have to seek the same from the Chief Justice of the Supreme Court of North Carolina, or through the Federal Court.

The Court finds that the defendant is presently being confined at Central Prison, 835 West Morgan Street, Raleigh, North Carolina, under a commitment for his imprisonment to serve the sentence imposed in the Superior Court of Camden County, which commitment issued following certification of the opinion of the Supreme Court, and certification from the Court of Appeals.

For the reason hereinabove stated, the undersigned declines to set any bond as requested.

IT IS DIRECTED that the Clerk of the Superior Court of Camden County furnish copies of this Order to the defend-

ant, Robert Muse, at his present place of confinement; and a copy to his court-appointed attorney, Mr. Gerald F. White, of Elizabeth City, N. C.; a copy to Solicitor Herbert Small; and that a copy of the same be filed with the Clerk of the Supreme Court of North Carolina.

This 22nd day of January, 1972.

/s/ WALTER W. COHOON
Walter W. Cohoon
Resident Judge, First Judicial District of North Carolina.